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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re: NATIONAL SECURITY AGENCY TELE-COMMUNICATIONS RECORDS LITIGA-TION	MDL Dkt. No. 06-1791-VRW **REPLY IN SUPPORT OF UNOPPOSED MOTION OF DEFENDANTS AT&T COMMUNICATIONS OF SOUTHWEST, INC., ET AL., TO DISMISS PLAINTIFF'S APPLICATION TO COMPEL** [Fed. R. Civ. P. 12(b)(6)] Date: May 7, 2009 Time: 10:30 a.m. Courtroom: 6, 17th Floor Judge: Hon. Vaughn R. Walker
This Document Relates To: *Clayton v. AT&T Communications of the Southwest, Inc., et al.*, No. 07-1187	

On April 2, 2009, defendants AT&T Communications of the Southwest, Inc., SBC Long Distance, L.L.C., SBC Advanced Solutions, Inc., TCG St. Louis Holdings, Inc. dba TCG St. Louis and Southwestern Bell Telephone L.P., and TCG Kansas City, Inc. (collectively, the "AT&T defendants") filed a motion to dismiss Plaintiff's First Amended Application to Compel Production of Documents and to Compel Witnesses to Appear and Answer Questions Upon Oral Examination (Dkt. 1-6, "Application") for failure to state a claim upon which relief can be granted. *See* Dkts. 594, 595. The motion set oral argument for May 7, 2009. *Id.* Under the local rules, plaintiff Clayton had until April 16, 2009 to file an opposition or statement of non-opposition. Civ. L.R. 7-3(a), (b). Plaintiff did neither. Plaintiff did file two sur-replies (Dkts. 601-602) addressing the United States' related motion for summary judgment (Dkt. 536), but neither sur-reply addresses the arguments made by the AT&T Defendants in their motion. Therefore, Plaintiff has filed no opposition to which the AT&T Defendants can reply.

For the reasons set out in the AT&T Defendants' motion, Dkts. 594, 595, this Court should dismiss Plaintiff's Application.

Dated: April 23, 2009

Respectfully submitted,

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DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, MARC H. AXELBAUM, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from the other signatory listed above.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on April 23, 2009, at San Francisco, California.

/s/ Marc H. Axelbaum
Marc H. Axelbaum